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No. 94-1025

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Petitioner,

v.

GOYA FOODS, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

ARGUMENT

Respondents' opposition brief is a wholesale revision of the legal, factual and procedural history of this case that ultimately illustrates the important unresolved questions of federal law which should be addressed by this Court. In an effort to divert the Court's attention from the substantive issues raised in the petition, Respondents' contend that the Court has no jurisdiction, that Petitioner failed to preserve his arguments below and, finally, that the abstention issue is largely academic by virtue of recent decisions rendered in the New Jersey action. As illustrated below, these contentions are erroneous and provide no substantive response to the primary legal issues presented in the petition.

I. THIS COURT HAS JURISDICTION TO REVIEW THE LOWER COURT'S ABSTENTION DECISION.

Respondents' argue that this Court has no jurisdiction to consider the issues raised in the petition by virtue of 28 U.S.C. § 1334(c)(2) which provides, in part, that "[a]ny decision to abstain or not to abstain made under this subsection is not reviewable by appeal. . . ." Respondents' jurisdictional hypothesis rests on the contention that because the word "subsection" allegedly is used in the Judicial Code to refer to a principal, lettered subdivision of a section, the appellate ban described in (c)(2) encompasses every abstention decision authorized in section 1334(c) including those based on (c)(1). Although this argument has superficial appeal, it ultimately rests on hypertechnical semantic gymnastics at odds with the plain meaning of the words used in 28 U.S.C. § 1334(c), with its substantive content and with the appellate decisions considering its meaning. It should, accordingly, be rejected by this Court.

A common sense, ordinary interpretation of the word "subsection", as it appears in section 1334(c)(2), reveals that its appellate ban is limited to those decisions authorized by the specific provision in which the ban appears, namely, (c)(2). Decisions resting on (c)(1), which is a separate, independent statutory subsection, are not, therefore, subject to the appellate limitations of (c)(2). Indeed, as Respondents' grudgingly concede, this is the conclusion reached by every circuit court which has addressed this issue. *See In The Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 6 F.3d 1184 (7th Cir. 1993); *In re East Port Associates*, 935 F.2d 1071 (9th Cir. 1991); *In re Ben Cooper, Inc.*, 924 F.2d 36 (2d Cir.), *cert. denied*, 500 U.S. 928 (1991); (Brief in Opp., p. 15 n.12). These decisions reflect the understanding that the semantic analysis urged by Respondents

"strains any logical reading of section 1334(c)(2) and takes the word 'subsection' entirely out of contet." *In re Nathanial Williams,* 88 B.R. 187, 188 (Bankr. N.D. Illinois 1988). The First Circuit decision in this case, rendered on the merits of the district court's discretionary abstention analysis, implicitly recognizes the strength of these appellate precedents.[1] Thus, no fewer than four appellate courts have considered, on the merits, appeals from discretionary abstention decisions founded on section 1334(c)(1). This Court should do the same.

Respondents' interpretation should be rejected for the additional reason that it fails to recognize the distinct substantive content of the abstention provisions at issue. 28 U.S.C. § 1334(c) authorizes two very different types of abstention, arising in two very different types of cases. Subsection (c)(1) relates to the unusual case of a district court exercising its discretion to abstain from adjudicating an essential "core" bankruptcy matter. Subsection (c)(2) does not vest the district court with discretion but, rather, directs the court to abstain when the issue to be resolved is "non-core" and arises under state law. Because these two types of abstention are dramatically different, and implicate different policy considerations, it is logical to conclude that Congress provided litigants with separate appellate remedies arising out of decisions made under each separate subsection. The interpretation urged by Petitioner recognizes this analytic distinction and is thus consistent with the substantive content of the statute. On the contrary, Respondents' theory offers no explanation as to why Congress would treat these distinct situations in exactly the same manner or why Congress would bury a comprehensive all encompassing appellate ban in the second sentence of an isolated statutory subsection. The simple answer, as provided by the ordinary interpretation

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[1] Respondents' similarly urged the First Circuit to dismiss petitioner's appeal on the basis of the jurisdictional limitations set forth in 28 U.S.C. § 1334(c)(2). The First Circuit, by considering the appeal on the merits, rejected Respondents' position.

of the words contained in the statute, is that Congress did not do so.

Indeed, this conclusion is buttressed by the Bankruptcy Reform Act of 1994 ("Act"). A careful reading of the amendments to the Bankruptcy Code contained in the Act reveals that, contrary to Respondents' assertions, the word "subsection" does not always solely refer to a principal, lettered subsection of a statute. Rather, the Act quite clearly reflects that in the context of the abstention statute, Congress referred to (c)(2) as an independent "subsection" within the overall statute. Specifically, in Section 104(b) of Pub. L. 103-394, Congress amended section 1334 by specifying amendments to "subsection (c)(2)". Congress did not refer to amendments to "paragraph (2) of subsection (c)" as Respondents' theory would require. Thus, the most recent example of Congress' use of the word "subsection" directly contradicts Respondents' primary jurisdictional contention.

Respondents also contend that because the Bankruptcy Reform Act of 1994 bars appellate review of most bankruptcy abstention decisions, the need for the intervention of this Court has been negated. Again, the exact opposite is true. The need for the intervention of the Court has been heightened for the very reason that the important issue of statutory construction addressed in the petition may avoid review in the future by virtue of Congress' sweeping amendments to the Bankruptcy Code. The erroneous legal application of 11 U.S.C. § 502(b) is thus capable of repetition but avoiding review. *See Moore v. Ogilvie*, 394 U.S. 814 (1969). Put differently, this may be the last opportunity the Court has to provide clear guidance concerning the interaction of two important federal statutes.

Finally, Respondents' entire jurisdictional thesis reveals a studied ability to avoid the import of Petitioner's primary legal argument which holds that 11 U.S.C. § 502(b) represents a nonwaivable mandate to the bankruptcy court

to determine objections to proofs of claim. This mandate divests the bankruptcy court of discretion, in the first instance, to abstain from adjudicating an objection to a proof of claim, thus rendering Respondents' jurisdictional argument irrelevant.

II. THE NEW JERSEY COURT HAS NOT AND CANNOT RESOLVE THE MERITS OF THE DISPUTE.

Respondents' next contend that the issues presented in the petition are moot because "substantially all of the parties' substantive inheritance and contract disputes" have been resolved by the New Jersey court. (Brief in Opp., p. 16). This assertion is factually inaccurate and is an attempt by Respondents to avoid the ramifications of their own voluntary submission to bankruptcy jurisdiction. It provides no support for denying Petitioner's request that a writ of certiorari be issued.

While the New Jersey court has certinly decided a number of important issues relating to Petitioners' estate, including the enforceability of the Penalty Clause under New Jersey law,[2] it has not decided, nor can it decide, the "core" bankruptcy issues raised in the objection to the Goyas' proofs of claim filed by Petitioner and Trustee Quiros-Lopez. (*See* Pet., pp. 11-16.) These objections raised the following seven issues: (1) the claims were fraudulent and overstated; (2) the Goyas refused to provide evidence to substantiate the amounts that they allegedly paid as attorneys fees; (3) the claims included payments by the Goyas to attorneys who represented clients who were not signatories to the 1974 Amendment; (4) the claims included pre and post petition attorneys fees; (5) the claims included estimated, anticipated future attorneys fees; (6) the claims were contingent and unmatured and should be liquidated by the bankruptcy court

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[2] The court applied New Jersey law even though the contract was executed and performed in Puerto Rico and contains a New York choice of law provision.

in order to afford Petitioner complete relief; and (7) the Penalty Clause upon which the claims were based is void as against the public policy of Puerto Rico and, if applicable, New York. Five of these issues (1, 2, 4, 5 and 6) were not before the New Jersey court and consist of matters that lie exclusively within the bankruptcy court's jurisdiction and mandate under 11 U.S.C. § 502(b). Respondents' contention that these issues have been resolved by the New Jersey court rendering the petition moot is, therefore, without factual or legal support. Indeed, in making this assertion, Respondents' are careful to avoid explaining the New Jersey court's authority to render a decision in this essential federal area. Because it cannot, the petition raises important unresolved issues of federal law relevant to the ultimate disposition of this matter. This Court should, therefore, intervene to reestablish procedural order to a proceeding which threatens to establish jurisdictional precedents unimagined by the drafters of the Bankruptcy Code.

III. PETITIONER RAISED HIS ARGUMENTS BELOW.

Respodents' final effort to avoid confrontation of the important federal issues raised in the petition is the suggestion that Petitioner failed to raise his arguments in the court below. This is Respondents' most egregious effort to rewrite history and requires little discussion.

As Respondents recognize, Petitioner's primary contention is that 11 U.S.C. § 502(b) is an express statutory mandate to the bankruptcy court to determine objections to voluntarily filed proofs of claims.[3] This argument was

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[3] Respondents' framing of the issue illustrates their concerted effort to mold the facts and applicable legal principles to suit their arguments. For example, Respondents write that Petitioner argues that "a bankruptcy court may *never* exercise its express statutory authority to abstain from resolving a state-law dispute if a party to the dispute has filed a proof of claim. . . ." (Brief in Opp., p. 18). Again, this is untrue. Petitioner asserts that, in the context of an objection to a proof of claim, the bankruptcy court is duty bound

raised below. (*See* 1st Cir. Br., pp. 21, 23-24; 1st Cir. Reply Br., p. 8; 1st Cir. Pet. for Reh., pp. 4-5). Petitioner also addressed in the First Circuit the question of the district court's unrestrained penchant to reach factual conclusions without the support of cognizable evidence. (*See* 1st Cir. Reply Br., p. 16; 1st Cir. Pet. for Reh., pp. 7-8). The facts underlying petitioner's due process argument were, therefore, before the First Circuit.

Finally, the district court's *sua sponte* determinations regarding Petitioner's bankruptcy filing has so affected the "fairness, integrity [and] public reputation" of the proceeding below such that the intervention of this Court would be appropriate *even if* Petitioner did not raise the facts supporting his due process argument below. *See United States v. Atkinson*, 297 U.S. 157, 160 (1936). Indeed, it is significant to note that Respondents do not dispute Petitioner's contention that the district court made vital factual findings without the benefit of testimony and without the benefit of a factual record. Given this admission, Respondents' effort to avoid scrutiny of this due process violation seems all the more strained and disingenuous.

IV. THE DECISION TO ABSTAIN WAS NOT A ROUTINE EXERCISE OF DISCRETION.

Respondents' substantive analysis relies upon inapposite authority and unavailing precedent. In an effort to convince this Court that decisions to abstain from adjudicating a voluntarily filed proof of claim are routine and ordinary, Respondents cite three bankruptcy court opinions. (Brief in Opp., p. 23). These decisions are factually distinguishable and do not address the specific legal issue presented for consideration by this Court.

In re Bicoastal Corp., 158 B.R. 237 (Bankr. M.D. Fla. 1993), the leading authority relied upon by Respondents,

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by 11 U.S.C. § 502(b) to determine the objection in the bankruptcy proceeding.

arose in the context of a motion to abstain in a confirmed Chapter 11 case in which the debtor had filed an objection to a claim filed by a potential creditor. The bankruptcy court denied the creditor's motion and noted that "the allowance or disallowance of a claim is clearly a core matter and thus *should* be heard by the Bankruptcy Court. . . ." *Id.* at 239 (emphasis added). The court further explained that this was the "general rule" followed in bankruptcy proceedings. Nevertheless, it stated that there was a "well-recognized" exception which allowed the liquidation of an unliquidated claim in a non-bankruptcy forum, leaving the "ultimate determination of the allowance or disallowance of the claim" to the bankruptcy court. *Id.* at 240.

This case is wrongly decided. First, the bankruptcy court offered no authority for its sweeping conclusion that there was a "well-recognized" exception to the principle that claims "should" be heard by the bankruptcy court. This dearth of authority renders the *Bicoastal* court's statement of the law highly suspect. Moreover, the court's jurisdictional analysis is compromised by the fact that it did not utilize the appropriate legal standard set forth in 11 U.S.C. § 502(b) when considering its authority to abstain from deciding an objection to a proof of claim. This standard provides that the bankruptcy court "shall" determine objections to proofs of claims, not that it "should". The court's failure to consider this relevant statutory mandate in its abstention analysis renders *Bicoastal* unavailing and suspect authority.

The same factors which diminish the impact of *Bicoastal* also renders *In re Denton,* 161 B.R. 987 (Bankr. E.D. Ark. 1993), irrelevant to this petition. *Denton* addressed whether a bankruptcy court should abstain from determining, under state law, the impact of the action of one state agency upon another. In avoiding resolving this quintessential state law issue, the court, again, did not

analyze 11 U.S.C. § 502(b). It simply stated, in a footnote, that it had authority "in the interests of justice" to abstain in the context of an objection to a claim. *Id.* at 988. As the court did not consider the issues presented here, *Denton,* like *Bicoastal,* provides scant support for Respondents' assertion that the abstention decision in this case was a "routine, fact-bound application of 'well-settled' legal principles." (Br. in Opp., p. 24).

Finally, the passage quoted as "seminal" by Respondents in *In re Republic Reader's Service, Inc.*, 81 B.R. 422 (Bankr. S.D.Tex. 1987), is, in fact, pure dicta. *Id.* at 426. The bankruptcy court itself stated that the case did not arise in the unique context of the filing of a proof of claim which "invokes the special rules of bankruptcy and is a core proceeding." *Id.* at 429 (citing *In re Wood*, 825 F.2d 90, 97 (5th Cir. 1987)). Rather, *Republic* arose in the context of a counterclaim in an adversary proceeding asserting a state law cause of action.[4] *Id.* Such a dispute implicates entirely different legal considerations than those raised by a creditor who has voluntarily and affirmatively placed his claim within the bankruptcy court's expansive equitable power. (*See* Pet., p. 15.) *Republic* thus offers as little support for Respondents' position as do *Bicoastal* and *Denton.*

As set forth above, Respondents' 30 page brief cites three factually distinguishable and legally suspect bankruptcy decisions in support of their assertion that the district court decision in this case was a routine everyday application of well-settled legal principles. This paucity of authority provides compelling proof that, as Petitioner contends, the opposite is true.

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[4] The court did note that even if a proof of claim had been filed, it would not "be reluctant" to "bifurcate the action with liability and damages to be determined in a nonbankruptcy forum and status and enforcement to be left to this court." *Id.* However, as was the case in *Bicoastal* and *Denton,* the court failed to address the statutory mandate of 11 U.S.C. § 502(b).

Without question, the district court erred in its reversal of the bankruptcy court's decision by ruling that the latter had abused its discretion because, pursuant to 11 U.S.C. § 502(b), the bankruptcy court did not have the discretion to abstain from adjudicating the objection to the Goyas' proofs of claim. As a result, the bankruptcy court was prevented from fulfilling its statutory obligation and great prejudice has befallen Petitioner and may befall similarly situated debtors in the future. Thus, the need for the intervention of this Court is apparent.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court issue a writ of certiorari to review the decision of the Court of Appeals for the First Circuit.

Respectfully submitted,

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